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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 517 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

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STATE OF GUJARAT

Versus

IMTIYAJ HAJI ABDUL SATTAR  
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Appearance:

Shri S.R. Divetia, Additional Public Prosecutor, for  
the appellant-State.

Shri M.S. Trivedi, Advocate, for Shri A.S. Yamani,  
Advocate, for the Respondent-accused.  
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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 17/01/97

ORAL JUDGEMENT

The judgment and order of acquittal passed by the learned Judicial Magistrate, First Class, at Dhrol on 15th November, 1990 in Criminal Case No.356 of 1984 is under challenge in this appeal by leave of this Court under Section 378 of the Code of Criminal Procedure, 1973 (the Code for brief). Thereby the learned trial Magistrate acquitted the respondent-accused of the offence punishable under Section 16 read with Section 7 of the Prevention of Food Adulteration Act, 1954 (the Act for brief).

The facts giving rise to this appeal move in a narrow compass. One Hariom Surendranath Pandya was working as the Food Inspector at Jamnagar at the relevant time and he was authorised to act for the purposes of the Act within the District of Jamnagar. He visited one shop in the name of Bombay Ice Candy in Jodiya on 27th June, 1984 around 2.00 p.m. in the company of one panch witness. The shop was owned by the respondent-accused and he was in the charge of the shop at the relevant time. Ice Candies were produced therein. The Food Inspector purchased in all 40 Ice Candies from the respondent-accused for the purposes of the Act. The entire quantity so purchased was divided by him into three parts. To each part was added Formalin of the required strength to the tune of fifty five (55) drops each. Each part was packed and sealed in a bottle container. One sample container was sent to the Public Analyst at Bhuj by registered post parcel. The memorandum with the specimen seal used for sealing the sample container was separately sent by registered post to the Public Analyst at Bhuj. The remaining two sample containers were forwarded to the Public Health Authority at Rajkot. The report of analysis of the samples received from the Public Analyst showed the sample to be adulterated. Thereupon, after obtaining the requisite consent from the Public Health Authority, the Food Inspector filed his complaint in the Court of the Judicial Magistrate, First Class, at Jodiya on 28th September, 1984. It came to be registered as Criminal Case No.356 of 1984. The intimation regarding launching of the prosecution, together with a copy of the report of the Public Analyst, was sent to the respondent-accused by a communication of 29th September, 1984. It appears that the respondent-accused took no steps for getting examined by the Central Food Laboratory one of the sample containers lying with the local health authority. The charge against the respondent-accused was framed on 29th August, 1987. He did not plead guilty to the charge. He was thereupon tried. After recording the prosecution evidence and after recording the further statement of the

respondent-accused under Section 313 of the Code and after hearing arguments, by his judgment and order passed on 15th November, 1990 in Criminal Case No.356 of 1984, the learned Judicial Magistrate, First Class, of Dhrol, Jodiya, acquitted the respondent-accused of the charge levelled against him. That aggrieved the prosecution agency. The State Government has therefore preferred this appeal after obtaining leave of this Court under Section 378 of the Code for questioning the correctness of the aforesaid judgment and order passed by the learned trial Magistrate.

Learned Additional Public Prosecutor Shri Divetia for the appellant-State has taken me through the entire evidence on record and has submitted that the learned trial Magistrate was in error in acquitting the respondent-accused on a highly technical ground. It has been urged by learned Additional Public Prosecutor Shri Divetia for the appellant that, after finding the merits of the case in favour of the prosecution, the learned trial Magistrate ought to have realised that there was ample material on record showing full compliance with Rules 17 and 18 of the Prevention of Food Adulteration Rules, 1955 (the Rules for convenience) framed under the Act. As against this, learned Advocate Shri Trivedi for the respondent-accused has submitted that the learned trial Magistrate was, on the basis of the material on record, quite justified in coming to the conclusion that Rules 17 and 18 of the Rules were not complied with and the respondent-accused deserved to be acquitted on that count as the said Rules were mandatory in nature. It has been urged by learned Advocate Shri Trivedi for the respondent-accused that the view taken by the learned trial Magistrate is a possible view and, according to well-settled principles governing acquittal appeals, the impugned judgment and order of acquittal passed by the learned trial Magistrate calls for no interference by this Court in this appeal.

It may be mentioned at this stage that the learned trial Magistrate has rightly come to the conclusion that the sample of Ice Candy was collected by the Food Inspector from the shop of the respondent-accused according to law. The learned trial Magistrate has, with respect, found no fault in the procedure followed by the Food Inspector in taking and sealing the sample bottles and forwarding one sample bottle to the Public Analyst at Bhuj and the two remaining sample bottles to the Public Health Authority according to law. The report of the Public Analyst at Exhibit 20 of the record of the case clearly shows the

sample to be adulterated. The finding recorded by the learned trial Magistrate in that regard is quite legal and valid.

The learned trial Magistrate has come to the conclusion that the mandatory provisions contained in Rules 17 and 18 of the Rules have not been complied with in the instant case only on the ground that neither the postal receipt issued by the post office showing registration of a postal article nor any acknowledgment slip received back duly signed by the Public Analyst at Bhuj was produced by and on behalf of the complainant to show that the memorandum with the specimen seal impression was separately sent to the Public Analyst at Bhuj.

It is true that the complainant has not brought on record any postal receipt or any duly signed postal acknowledgment on record showing sending of the memorandum with the specimen seal impression separately to the Public Analyst at Bhuj. There is, however, on record one communication from the Public Analyst at Bhuj at Exhibit 16 on the record of the case. Therein it is clearly mentioned about receipt of the sample bottle by registered post parcel on 3rd July, 1984 and the memorandum with the specimen seal impression by registered post on 30th June, 1984. This document at Exhibit 16 on the record of the case clearly shows that the memorandum with the specimen seal impression was sent separately by registered post to the Public Analyst at Bhuj after sending the sample bottle by registered post parcel. Rules 17 and 18 of the Rules require separate forwarding of the container of the sample and the memorandum with the specimen seal impression to the Public Analyst. When there is some material on record showing separate receipts of both these articles by the Public Analyst, it is not necessary for the prosecution to bring on record any further or other material to show that they were separately sent. A presumption on the basis of such acknowledgment would arise as to separate forwarding of both the sample container and the memorandum with the specimen seal impression. This presumption will have to be raised in view of the relevant provisions contained in Section 114 of the Evidence Act, 1872. The very fact that these two articles were separately received by the Public Analyst at Bhuj would clearly go to show that they were separately sent by the Food Inspector in due compliance with Rules 17 and 18 of the Rules. To take a contrary view would tantamount to an absurd logic like saying that if a man is shown to be alive in January, 1997, he should

produce evidence to show that he was alive in December, 1996 if he is required to show that he was alive every month. Such absurd logic cannot be pressed into service for coming to the conclusion that Rules 17 and 18 of the Rules were not complied with in the instant case. In that view of the matter, the contrary conclusion reached by the learned trial Magistrate with respect to compliance with Rules 17 and 18 of the Rules is not sustainable in law.

The learned trial Magistrate has also found fault with the consent for prosecution given by the Public Health Authority in the instant case. The consent letter is at Exhibit 21 on the record of the case. The consent has been given after perusing all relevant papers including the report of analysis by the Public Analyst at Bhuj of the sample sent to him for analysis as transpiring from the consent order at Exhibit 21 on the record of the case. The learned trial Magistrate has found fault with it only on the ground that the relevant provisions of the Act constituting the offence have not been mentioned therein. In other words, the learned trial Magistrate has questioned the validity of the consent order on the ground that no reasons are mentioned therein for giving consent for prosecution.

In this connection, a reference deserves to be made to the Division Bench ruling of this Court in Harshvadan Dahyalal Sevak, Food Inspector v. Nareshbhai Devandas Vashvani and another, reported in 1991(2) GLH 615. It has been clearly held therein that the consent order under Section 20 of the Act need not record any reason for granting consent for prosecution.

The aforesaid Division Bench ruling is binding to me sitting as a single Judge. Even otherwise, I am in respectful agreement therewith. It is on all fours applicable in the instant case. It cannot be distinguished on the ground that the Public Health Authority did not state his opinion on commission of the offence by the respondent-accused in the light of the relevant provisions contained in the Act as submitted by learned Advocate Shri Trivedi for the respondent-accused. The opinion of the Public Health Authority in that regard would be a part of his reasoning and, in view of the aforesaid binding Division Bench ruling of this court, such reasoning is not required to be given by the Public Health Authority for the purpose. The contrary conclusion reached by the learned trial Magistrate cannot be upheld.

In view of my aforesaid discussion, I am of the opinion that the impugned judgment and order of acquittal passed by the learned trial Magistrate cannot be sustained in law. It has to be quashed and set aside. The respondent-accused has to be held guilty of the offence punishable under Section 16 read with Section 7 of the Act.

That would bring me to the question of sentence in the instant case. Ordinarily, the respondent-accused has to be heard before passing the order of sentence. The minimum punishment for the offence punishable under Section 16 of the Act is imprisonment for six months and fine of Rs.1,000/-. I think the interests of justice would be met if the minimum punishment is imposed on the accused as the sample was collected sometime in 1984 and the appeal is being decided nearly 13 years thereafter in 1997 though the case calls for stricter punishment. In that case, I think it is not necessary to hear the respondent-accused on punishment.

In the result, this appeal is accepted. The judgment and order of acquittal passed by the learned Judicial Magistrate, First Class, at Dhrol in Criminal Case No.356 of 1984 is quashed and set aside. The respondent-accused is held guilty of the offence punishable under Section 16 read with Section 7 of the Act. He is punished with simple imprisonment for six months and fine of Rs.1,000/-, in default, simple imprisonment for one month more. The warrant of his arrest is ordered to be issued.

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(apj)